IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14793 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALIM ISMAILBHAI SHAIKH ALIAS ABDUL SAMAD S/O. NIZAMUDDIN

Versus

COMMISSIONER OF POLICE AHMEDABAD CITY

Appearance:

1. Special Civil Application No. 14793 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 18/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226

of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 15th of July, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is in detention as bootlegger from 15th of July, 2004 in pursuance of the above order.

2. The grounds placed on record of detention reveal that two crimes came to be registered against the petitioner on 3rd June, 2004 and on 8th of July, 2004 before Prohibition Police Station, Southern Zone, under Sections 66-B, 65-E and 81 of the Bombay Prohibition Act, whereby it is alleged that in one case 25 liters of country liquor while in other case 40 liters of country liquor was found in possession of the petitioner. The detaining authority took into consideration the whole investigation papers of both the crimes registered against the petitioner and came to the conclusion that the petitioner was dealing in storing, selling and transporting the country liquor knowing fully well that the consumption of the country liquor is injurious to the public health. As per the detaining authority, the petitioner, on account of the above material before him, was a bootlegger and his antisocial activity was required to be prevented forthwith because such activities was prejudicial to the maintenance of public order and adversely affecting the public health. From the above material, therefore, the detaining authority passed the order of detention of the petitioner which is under challenge in this petition.

4. Learned Advocate Mr. Kamlesh Kachhavah for the petitioner and learned AGP Mr. HM Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

5. Out of various grounds urged on behalf of the petitioner and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was material placed before the detaining authority to come to the conclusion that by the activity of the petitioner the public order was disturbed and public health was adversely affected. The fact of the present case are squarely covered by a decision of the Division Bench of this Court, in the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH

393, wherein the Division Bench of this Court after considering the decision of the Apex Court came to the conclusion that merely filing of criminal case under the Bombay Prohibition Act against the detenu would not lead to interference that his activities were prejudicial to the maintenance of public order and adversely affecting to the public health. There must be some credible material before the detaining authority to come to a conclusion that the activity of the petitioner was affecting the public order. A line has to be drawn between "breach of public order " and "breach of law and order". The registration of crimes against the petitioner, at the most, may be the breach of law and order, but that itself cannot be construed to be prejudicial to the maintenance of public order. In absence of credible material before the detaining authority, the subjective satisfaction reached by the detaining authority cannot be said to be legal, valid and in accordance with law, so far as it relates to the breach of public order . In this view of the matter, order under challenge is required to be quashed and set aside.

7. In the result the petition is allowed. The order passed by Commissioner of Police, Ahmedabad City, on 15th of July, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Salim Ismailbhai Shaikh @ Abdul Samad S/o Nizamuddin Shaikh is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair